



*Mark Parkinson, Governor
John W. Mitchell, Acting Secretary*

DEPARTMENT OF HEALTH
AND ENVIRONMENT

www.kdheks.gov

January 5, 2011

Ms. Tina Conger
Glassman Bird Braun
& Schwartz
PO Box 727
Hays, Kansas 67601-0727

Re: Hays Shooting Range

Dear Ms. Conger:

Enclosed please find two original signed contracts in the above matter. Pursuant to our conversation this morning, it is my understanding that you will forward the additional original to the appropriate party.

If you have any questions or require any additional information, please do not hesitate to contact Daric Smith at 785.296.1333.

Sincerely,

A handwritten signature in black ink, appearing to read "Shelia A. Pendleton". The signature is fluid and cursive, with a long, sweeping underline.

Shelia A. Pendleton
Office Manager

/sap
enclosures

e/att: Rick Bean

CONTRACT
Between
KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
And
THE City OF HAYS, KANSAS
And
THE County OF ELLIS, KANSAS

SUBJECT: Hays Shooting Range, 1116 Vineyard Road, Hays, Kansas

DIVISION: Environment, Bureau of Environmental Remediation

TERM: April 30, 2010 through completion of the project.

This Contract is made between the Kansas Department of Health and Environment (hereinafter "KDHE"), the City of Hays, Kansas (hereinafter "City") and the County of Ellis, Kansas (hereinafter, "County") (hereinafter referred to in the aggregate as "the Parties").

WHEREAS, the Hays Shooting Range, located at 1116 Vineyard Road, Hays, Kansas (hereinafter the "Site") is in need of environmental remediation and the Parties have each agreed to contribute certain efforts to that remediation;

NOW, THEREFORE, on the day and year first executed by the Secretary of KDHE (hereinafter, "Secretary") and in consideration of the mutual promises contained herein, the Parties agree as follows:

THE PARTIES MUTUALLY AGREE:

1. The provisions found in the Contractual Provisions Attachment (Form DA-146a), which is attached hereto, are hereby incorporated in this Contract and made a part hereof by reference as Exhibit "A".
2. This Contract and its exhibits contain the entire agreement between the Parties and may only be modified, extended and/or amended if such modification, extension and/or amendment is in writing and executed with the same formality as this Contract.
3. City and County shall be responsible, without qualification, for meeting all terms, conditions and requirements assigned to each pursuant to this Contract. City and County shall

each be totally responsible for all actions and work performed by the subcontractor(s) of each. All terms, conditions, and requirements of this Contract shall apply without qualification to each subcontractor of the City and the County. As used herein, the terms "City" and "County" shall include all subcontractors hired by each.

4. This Contract shall terminate upon City's and County's receipt of written notice from KDHE that City and County have satisfactorily completed the terms hereof.

5. The Site located in the northwest quarter of Section 26, Township 13 South, Range 19 West in Ellis County, Hays, Kansas and more particularly described as:

That portion of the Northwest Quarter (NW/4) of Section Twenty-six (26)/ Township Thirteen (13) South, Range Nineteen (19) west of the Sixth P.M. more particularly described as a parcel of land located with the northwest corner situated 1,716 feet (26 chains) south and 528 feet (8 chains) east of the intersection of Vineyard Road and 200th Avenue, both Ellis County roads. The property boundary runs east along this line for 660 feet (10 chains), then south 264 feet (4 chains), west 660 feet (10 chains) and back north 264 feet (4 chains) comprising an area of approximately four (4) acres.

For purposes of this Contract, the Site includes all areas shown in Exhibit "B" which is attached hereto and made a part hereof by reference.

6. The current property owners of the Site are Diehl Oil, Incorporated and Glen and Rebecca Diehl. Both the company and the individuals have an address of 1116 Vineyard Road, Hays, Kansas 67601. This Contract is subject to the Parties obtaining access to the property from said property owners.

7. The Secretary has authority and responsibility to protect the public health and the environment; specifically, as it pertains to contamination and remediation of contamination of the waters and soils of the state, under the authority of K.S.A. 65-161 through K.S.A. 65-171z; relative to the safe and sanitary disposal of hazardous wastes, under the authority of K.S.A 65-3430, *et seq.*; in matters involving hazardous substances and the hazardous substance cleanups,

under the authority of the Kansas Environmental Response Act (K.S.A. 65-3452a, *et seq.*).

8. The Secretary has the authority pursuant to K.S.A. 65-3453(a)(1) to determine that the cleanup of a site polluted by a hazardous substance is necessary to protect the public health or the environment.

9. The Secretary has the authority pursuant to K.S.A. 65-3453(a)(6) to enter into contracts or agreements with any person or company to conduct the necessary clean-up operations.

10. The presence of the contaminants identified in the soil and waste at and surrounding the Site constitute "pollution" as defined by K.S.A. 65-171d and are "hazardous substances" as defined by K.S.A. 65-3452a.

11. The presence of the contaminants identified at the Site is causing or threatens to cause pollution of the soil and/or waters of the state, or is, or threatens to become, a hazard to persons, public health or safety.

12. KDHE's costs associated with the investigation of the Site shall not exceed twenty thousand dollars (\$20,000.00) including, but not limited to salaries, travel, supplies, equipment, per diem, analytical data, and all other associated costs.

13. KDHE's costs associated with the technical oversight and regulatory management of the City's and the County's and/or their contractor's performance of the terms of this Contract, including, but not limited to, salaries, travel, supplies, equipment, per diem, analytical data, and all other associated costs, shall not exceed ten thousand dollars (\$10,000.00).

14. City and County agree that all activity contemplated or performed pursuant to this Contract shall be conducted subject to the approval of KDHE in accordance with the terms of this Contract and consistent with standards, specifications and schedules approved by KDHE. Said standards, specifications and schedules shall include, but not be limited to, the Required Task Summary attached hereto and made a part hereof as Exhibit "C"

15. All samples analyzed pursuant to this Contract shall be analyzed by a KDHE-approved laboratory using KDHE-approved laboratory methodologies.

16. The Parties shall, upon receipt of this Contract, designate a project coordinator who shall be responsible for overseeing the implementation of this Contract. To the maximum extent possible, all communications between the Parties and all documents, reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Contract, shall be directed through the project coordinators. The parties agree to provide at least seven (7) days written notice prior to changing project coordinators.

17. That the Parties shall provide each other at least seven (7) days advance written notification before conducting any investigation and/or removal action pursuant to this Contract.

KDHE AGREES:

18. To conduct an Environmental Investigation at the Site which will accomplish the following: a) Determine the vertical and horizontal extent of lead contamination in soil and sediment at the Site; and b) Determine the volume of contaminated soil and sediment to excavate from the Site. A summary report will be provided to the City and County to document the findings.

19. To fund all costs associated with the Environmental Investigation of the Site in accord with the spending limits set forth in paragraph 18 hereof. The Environmental Investigation shall be completed by KDHE within 120 days of signature of this Agreement, unless mutually extended by the Parties.

20. To provide technical oversight and regulatory management during the Removal Action of the soils and sediment in accord with the spending limitations set forth in paragraph 19 hereof. These activities shall include, but are not limited to: a) Assuring that the project complies with applicable state and federal statutes and regulations; b) Reviewing and approving the final

remedial design plan; c) Providing oversight to the City's environmental contractor throughout the remediation process; and, d) Performance of verification sampling following the remediation of the Site.

CITY AGREES:

21. To hire either a licensed engineer or licensed geologist (Consultant) to develop a Removal Action plan to properly remediate the Site based on the data collected by KDHE during the Environmental Investigation described in paragraph 19 hereof. The Consultant shall direct City and County personnel and equipment to perform the Removal Action. The Removal Action plan with an implementation schedule shall be submitted to KDHE for review within 120 days of receipt of a final Environmental Investigation Report from KDHE,
22. That the Removal Action shall be implemented and completed no later than 180 days following KDHE approval of the Removal Action Plan, unless mutually extended by the Parties.
23. That a Summary Report documenting the cleanup activities shall be drafted by the City and submitted for KDHE approval within 60 days from the completion of the Removal Action.
24. That all sub-contractor(s) and/or specialized equipment required for Removal Action shall be procured by the City at its sole cost.

COUNTY AGREES:

25. To provide all equipment for digging, loading and hauling excavated soil to a KDHE-approved disposal facility. All costs associated with County personnel, equipment and disposal shall be borne solely by the County, provided the total costs do not exceed the City's costs for remediation. In that event, the City and County shall be equally responsible for any excess costs over and above the City's remediation costs.


IN WITNESS WHEREOF, the Parties have affixed their signatures below:

THE CITY OF HAYS, KANSAS

KANSAS DEPARTMENT OF
HEALTH AND ENVIRONMENT

THE COUNTY OF ELLIS,
KANSAS

By:



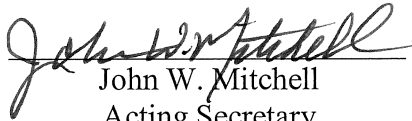
Signature
Toby Dougherty

Name (Typed or Printed)
City Manager

Title
11-23-10

Date

By:




John W. Mitchell
Acting Secretary

12-20-2010

Date

By:



Signature

Name (Typed or Printed)

Title
11-29-10

Date

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

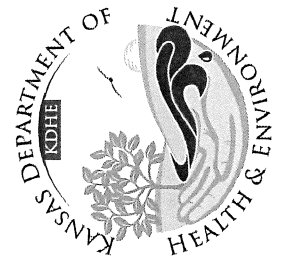
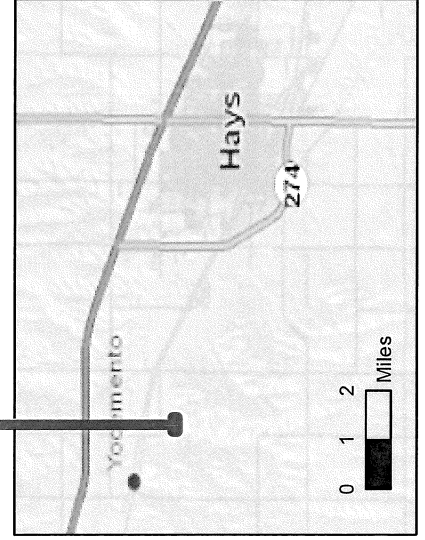


Exhibit B

Site Area Hays Shooting Range Hays, KS



Area Map



REQUIRED TASK SUMMARY

General Removal Actions To Be Completed.

- a. Environmental Investigation – Completed by KDHE - within 120 days of the signature of this Agreement.
- b. Removal Action Plan – Completed by City – within 120 days of receipt of KDHE’s Environmental Investigation Report.
- c. Removal Action Implementation - City and County shall commence implementation of the tasks detailed in the KDHE approved Removal Action Plan within 180 days from the date of KDHE approval.
- d. Following cleanup City shall draft a Summary Report for KDHE approval within 60 days from Removal Action completion.

EXHIBIT “C”